

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
CENTRAL DIVISION

FILED
NOV 26 2007
[Signature]

UNITED STATES OF AMERICA, * CR 07-30060 (01)
*
Plaintiff, *
*
-VS- * ORDER AND OPINION
*
ADAM C. BORDEAUX, *
*
Defendant. *

The defendant has filed a motion (Doc. 17) to suppress evidence, namely a urine sample and the test results. United States Magistrate Judge Moreno conducted an evidentiary hearing on November 15, 2007. The defendant and counsel for both parties were present. I have conducted a *de novo* review of the transcript (Doc. 51) and all other documents and exhibits.

The magistrate issued a report and recommendation (Doc. 54) after announcing his bench decision (Doc. 52). I agree that the evidence clearly shows that the defendant voluntarily consented to provide the urine sample. No rights of the defendant were violated. The motion to suppress is clearly without any merit.

Defendant has filed objections (Doc. 55), which are also without legal merit. Defendant claims that several witnesses were not credible. It would be a very unusual case in which a court acting on an appeal would attempt to judge the credibility of witnesses, including reversing findings on credibility made by the trial judge who saw the witnesses and heard the testimony. This is not one of those highly unusual cases. The report and recommendation should be adopted, the motion denied, and the objections overruled.

Now, therefore,

IT IS ORDERED, as follows:

- 1) The motion (Doc. 17) to suppress evidence is denied.
- 2) The report and recommendation (Docs. 52 and 54) is adopted.
- 3) The objections (Doc. 55) of the defendant are overruled.

Dated this 26th day of November, 2007.

BY THE COURT:


CHARLES B. KORNMAN
United States District Judge

ATTEST:
JOSEPH HAAS, CLERK

BY: 
DEPUTY
(SEAL)